

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

MICHAEL BINDAY,
JAMES KEVIN KERGIL, and
MARK RESNICK,

Defendants.

Case No. 12 Cr. 152 (CM)
ECF Case

**AFFIDAVIT OF DAVID ROSE IN
SUPPORT OF LINCOLN NATIONAL
CORPORATION'S AND THE
LINCOLN NATIONAL LIFE
INSURANCE COMPANY'S PARTIAL
MOTION TO QUASH RULE 17
SUBPOENAS**

STATE OF NORTH CAROLINA)

) ss.:

COUNTY OF GUILFORD)

DAVID ROSE, being duly sworn, deposes and says that:

1. I am an Assistant Vice President of Information Technology at The Lincoln National Life Insurance Company. I have held this position since I joined Jefferson Pilot Life on January 16, 2000. Prior to that I was a Technical Director in Information Technology for Lincoln Benefit Life (a subsidiary of Allstate Corporation, and no connection to my current employer, despite the similarity of name) from 1994 – 2000. Prior to that I was an Assistant Vice President of Information Technology at USLIFE Systems Corp. from 1983 – 1994.

2. I submit this affidavit in support of Lincoln's partial motion to quash the subpoenas at issue in the above-captioned criminal case.

3. I am familiar with the matters set forth herein based on my personal knowledge, my experience working in information technology at Lincoln, and conversations I have had with

my colleagues at Lincoln who have been working with me to analyze Lincoln's ability to respond to these various subpoena requests.

4. It is my understanding that on February 15, 2013, Defendant Michael Bindow served a subpoena on Lincoln, which, in part, contained the following request: *"For each year beginning with 2001 through 2010 inclusive documents sufficient to show (1) the number of new Universal Life ("UL") policies the Company issued to applicants who were 70 years old or older on the date of issuance; (2) the amount of the company's new UL policy premium and the mount (sic) of the Company's new UL policy premium received from applicants 70 years old or older on the date of issuance; (3) the Company's total revenue for each year from 2001 through 2010."*

5. Since receiving the subpoena, I have been working to determine what Lincoln would have to do in order to attempt to generate a report of the information sought in this request. It is my view that it would take Lincoln approximately 13 weeks of substantial and sustained effort by myself and others in the IT department, to even partially comply with this request.

6. Lincoln has several administrative platforms which house data in relation to the policies it issues. One of these, which we call the "LifeComm" system, houses approximately 65% of Lincoln's currently inforce universal life policies. Between 2001 and 2010, nine previous administrative platforms were consolidated into the LifeComm system. As a result of that consolidation, however, historic premium receipts for certain policies tracked by those legacy systems were aggregated, and Lincoln would have to manually pull other files for those policies to reconstruct the amount of premiums received in each year for 2001 through 2010, as requested.

7. In addition, within LifeComm, all policies are split into two additional databases. These databases each contain a master file and an auxiliary file for overflow information. The master files contain information for active policies and policies that have been terminated and are still within their reinstatement period (typically six years). At the end of each calendar year, a back up copy of the files in LifeComm is created and archived. In order to go back beyond six years, yearly back up files would have to be restored and searched.

8. In order to begin culling the information from the February 15 subpoena, IT personnel at Lincoln would need to first design, develop, peer review and unit test a computer software program that would query the master files, identify all universal life policies, identify the premiums paid in each calendar year, and then segregate this data for the population of policies issued to those who were near their 70th birthday at the time of issuance. From my experience, I estimate that this process would take approximately two weeks.

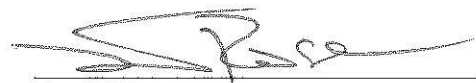
9. Once the software program has been created to review the LifeComm files according to the search parameters, executing the search within the current files will take approximately one week. This includes the creation of a reporting template showing the results within the LifeComm databases. I estimate that it will take up to two weeks to run a quality check on the results to ensure accuracy.

10. Next, I estimate that it would take an additional two weeks for the software program to review the necessary year-end back-up files. Finally, I believe it would then take several additional weeks to quality check this information to ensure the accuracy of the results, combine it with the data collected from the current policy files, and prepare documents presenting the final data.

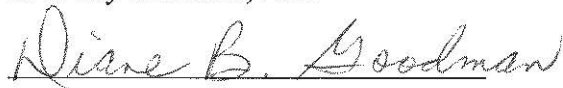
11. In total, based on my experience, I estimate that the above-described effort will take approximately 13 weeks of sustained effort by IT professionals in my group, at minimum.

12. Additionally, based on my understanding of the subpoena's request, the search effort described above would only partially satisfy the request. This is because this search effort would only cover the LifeComm database, which houses only an estimated 65% of Lincoln's universal life policy data. The remaining roughly 35% of Lincoln's policy information is housed in two other administrative systems. Capturing information from those systems would require a similar effort to the one described above for LifeComm, taking several additional weeks to process. Third, not all historical financial data for policies converted from other systems to LifeComm were fully transferred to the LifeComm system. Several of the previous administrative systems whose data was consolidated into LifeComm are no longer operational, and therefore Lincoln would be unable to access this historical information through the computerized searches described above. Accordingly, only partial and incomplete results could be obtained, and even then only after the approximately 13 weeks of effort described above.

Dated: March 15, 2013


David Rose

Sworn to before me this
15th day of March, 2013



Notary Public

